

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SEHU-KESSA SAA TABANSI, <i>also</i>)	1:15cv246
<i>known as ALFONSO PERCY PEW,</i>)	Electronic Filing
)	
Plaintiff,)	Judge David Stewart Cercone
)	Magistrate Judge Lisa Pupo Lenihan
v.)	
)	
CORRECTIONAL CARE)	
SOLUTIONS, INC., <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Sehu-Kessa Saa Tabansi, also known to this Court as Alfonso Percy Pew, initiated this action on October 6, 2015, with the filing of a civil rights Complaint, where he alleges that medical staff at SCI-Forest refuses to order the treatment that was prescribed by his orthopedic specialist, Dr. Kunkle; specifically, a TENS Unit Electro Stimulator, two scrotal supporters, a soft back brace and Neurontin medication. (ECF No. 1.) The case was closed pending the receipt of the case filing fee or a motion to proceed *in forma pauperis* ("IFP motion"), which Plaintiff filed on January 19, 2016. (ECF No. 2.) The IFP motion was then referred to United States Magistrate Judge Lisa Pupo Lenihan for review in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D

On January 21, 2016, the Magistrate Judge issued a Report and Recommendation wherein she recommended that Plaintiff's IFP motion be denied in accordance with 28 U.S.C. 1915(g), and that this action be dismissed without prejudice and reopened when Plaintiff paid the full \$400.00 filing fee. The Magistrate Judge determined that Plaintiff has incurred three or more "strikes," and, therefore, pursuant to the dictates of 28 U.S.C. 1915(g), he cannot proceed

in forma pauperis. She also determined that Plaintiff has not met the threshold showing of imminent danger of serious physical injury in order to avail himself of the “imminent danger” exception to § 1915(g).

Plaintiff filed timely Objections to the Magistrate Judge’s Report and Recommendation.¹ (ECF No. 4.) In his Objections, Plaintiff states that he meets the imminent danger exception to 28 U.S.C. § 1915(g) because he suffers from “spurring” and spinal arthritis and because his orthopedic specialist, Dr. Kunkle, has prescribed certain treatment and medication that the Department of Corrections refuses to pay for and provide him. At the end of Plaintiff’s Objections, however, he admits that, since he filed his Complaint in this action, he has been provided with all of Dr. Kunkle’s prescribed treatment and medication except for a TENS Unit Electro Stimulator, which he claims is still needed. Plaintiff has not demonstrated in his Objections how the absence of the TENS Unit Electro Stimulator puts him in such imminent danger of serious physical harm so as to rise to something akin to a genuine emergency. Therefore, upon an independent review of the record and consideration of the Magistrate Judge’s Report and Recommendation, and Objections thereto, the following Order is entered.

AND NOW, this 17th day of February, 2016,

IT IS HEREBY ORDERED that Plaintiff’s motion for leave to proceed *in forma pauperis* (ECF No. 2) is **DENIED** and this case is dismissed without prejudice to Plaintiff’s right to reopen it by paying the full \$400.00 filing fee.

¹ Plaintiff titled his pleading “Objections to Magistrate Recommendation and Report Under FRCP 59(e) and 60(b).” (ECF No. 4.) However, Federal Rules of Civil Procedure 59 and 60 apply only to actions where a judgment has been entered. Judgment has not yet been entered in this case so we will construe the arguments in Plaintiff’s filing simply as Objections to the Report and Recommendation.

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation (ECF No. 3) is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.



David Stewart Cercone
United States District Judge

cc: Sehu-Kessa Saa Tabansi
a/k/a Alfonso Percy Pew
BT-7263
SCI Forest
P.O. Box 945
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(Via First Class Mail)